there can be no recovery upon the debt itself. *McLane* v. *Allison*, 60 Kan. 441, 56 Pac. 747; *Neosho Valley Investment Co.* v. *Huston*, 61 Kan. 859, 59 Pac. 643. The mortgage, although no longer a distinct right, is still a distinct remedy.

NUISANCE — MEASURE OF DAMAGES — INFRINGEMENT OF EASEMENT: WHETHER RECOVERY FOR INJURY TO OTHER THAN THE DOMINANT TENEMENT. — The plaintiff owned two lots on a street, which had ancient lights, and a lot to the rear, which had none. They were valuable mainly as a factory site. The defendant erected a building shutting off the lights. The court refused an injunction because of the plaintiff's delay. *Held*, that the plaintiff may recover for the depreciation in value of the whole site. *Griffith* v. *Clay & Sons, Limited*, [1912] 2 Ch. 291.

The court in the principal case treats the infringement of the easement as permanent, as it would be if the case were one of eminent domain. *Neff* v. *Pennsylvania R. Co.*, 202 Pa. 371, 51 Atl. 1038. See 11 HARV. L. REV. 118. For such permanent injury to his property a plaintiff may ordinarily recover the diminution in its market value. *Rabe* v. *Shoenberger Coal Co.*, 213 Pa. 252, 62 Atl. 854. *Fidelity Trust Co.* v. *Shelbyville Water and Light Co.*, 33 Ky. L. 202, 110 S. W. 239. Damages in cases of easements are in general computed upon the property to which the easement is appurtenant. *Neff* v. *Pennsylvania R. Co.*, *supra*. One decision gives damages for shutting off light to all the windows in the house, not alone for those having ancient lights. *In re London, etc. Ry. Co.*, 24 Q. B. D. 326. The principal case, allowing damages for injury to each lot, is a somewhat doubtful extension of this theory, and practically adopts the general rule for damages in tort. *Cf. Rajnowski* v. *Detroit, etc. R. Co.*, 74 Mich. 20, 41 N. W. 847. However, the most profitable use to which the land could be put is considered in computing the market value. *Sargent* v. *Merrimac*, 196 Mass. 171, 81 N. E. 970. This is possible here, for the erection of new buildings by the owner will not extinguish the easement. *Ecclesiastical Commissioners for England* v. *Kino*, 14 Ch. D. 213. The decision could be based on the sound ground that the damage to the whole site was really the injury to the most profitable use of the front lots, *i. e.* in connection with the rear one. *Cf. Maynard* v. *Northampton*, 157 Mass. 218, 31 N. E. 1062.

PAROL EVIDENCE RULE — CONSTRUCTION OF DOCUMENTS — WILLS: DECLARATIONS OF INTENTION WHEN LEGATEE MISDESCRIBED. — In 1891 the testator, after giving a life estate, devised all of his freehold property to "John William Halston, the son of Israel Halston." Israel Halston had a son by this name who had died in 1874, and a younger son named John Robert Halston, who claimed the devise. To support the claim, there was offered a declaration of the testator to John Robert Halston that he was to have the land. *Held*, that the declaration is admissible. *In re Halston*, [1912] 1 Ch. 435.

All of the facts and circumstances respecting persons or property to which the will relates are legitimate evidence to enable the court to ascertain the meaning and application of the words of the will. *Doe d. Hiscocks* v. *Hiscocks*, 5 M. & W. 363; *Stevenson* v. *Druley*, 4 Ind. 519. But to do this a court cannot hear declarations of intention by the testator, as this permits parol matter to evidence intentions which the law requires to be written with certain formalities. *Doe d. Hiscocks* v. *Hiscocks*, *supra*; *Wootton* v. *Redd*, 12 Gratt. (Va.) 196. A stronger reason seems to be the practical one that such evidence can be manufactured with great ease. See 4 WIGMORE, EVIDENCE, § 2471. However, this rule is subject to the exception that if the description in the will accurately applies to two or more persons or things, declarations by the testator are admissible to show which one is meant. *Doe d. Gord* v. *Needs*, 2 M. & W. 129. In such a case the declarations are used merely to expand and make more specific

the words of the document, and the practical objections are reduced to a minimum. See 4 WIGMORE, EVIDENCE, § 2472. The ruling in the principal case would destroy a well-established rule of exclusion.

PHYSICIANS AND SURGEONS — NECESSITY OF PATIENT'S CONSENT TO OPERATION. — The plaintiff consented to be operated on by the defendant for a rupture in the left groin. After the patient was under the anæsthetic the defendant found in the right groin a rupture, dangerous to the plaintiff's life, and operated on that side instead of the other. The plaintiff brought suit for assault and battery. *Held*, that the plaintiff cannot recover. *Bennan* v. *Parsonnet*, 83 Atl. 948 (N. J.).

Ordinarily a surgeon is not justified in performing an operation more serious than the one expressly consented to. *Pratt* v. *Davis*, 224 Ill. 300, 79 N. E. 562. But when new conditions are found after the anæsthetic has been administered, making a different operation advisable, the public interest in the preservation of life and health gives weight to the argument that the surgeon should be allowed to use his discretion. In such a case it has been suggested that the patient impliedly consents to the different operation. See *Mohr* v. *Williams*, 95 Minn. 261, 269. A result of this view is seen in the suggestion by the court in the principal case that there is consent to operations similar to that authorized and no more serious. It would seem to be better to rest the justification directly on grounds of public policy rather than on the fiction of implied consent. Such a justification would be confined strictly to cases where the plaintiff's life was in immediate danger, and in all other cases he should be allowed to regain consciousness and given an opportunity to give or withhold actual consent.

POWERS — ATTEMPT TO EXERCISE A POWER CONTAINED IN THE WILL OF A LIVING TESTATOR. — A will provided that in case of a legatee's predecease, the legacy should go to whomever the legatee should appoint by will. The legatee predeceased the testatrix, leaving a will exercising the power. *Held*, that the power is not validly exercised. *In re Mayo's Will*, 136 N. Y. Supp. 1066 (N. Y., Sur. Ct.).

A power to dispose of property must be created by an instrument which would itself be sufficient to dispose of that property. *Clark* v. *Graham*, 6 Wheat. (U. S.) 577; *Williams* v. *Paine*, 169 U. S. 55, 18 Sup. Ct. 279. Since a will can only dispose of property at the testator's death, it cannot create a power until then. *Jones* v. *Southall*, 32 Beav. 31. The slight weight of authority holds invalid the exercise of a power by a will executed prior to its creation. *Matteson* v. *Goddard*, 17 R. I. 299, 21 Atl. 914. *Contra*, *Burkett* v. *Whittemore*, 36 S. C. 428, 15 S. E. 616. The opposite result is reached under the English Wills Act. *Boyes* v. *Cook*, 14 Ch. D. 53; *Airey* v. *Bower*, 12 A. C. 263. But invalidity of the exercise seems inevitable where, as in the principal case, the probate of the will precedes the power's creation, because the power cannot be exercised while inchoate. *Jones* v. *Southall*, *supra*. The decision is further supported by the fact that the donee of the power was dead at its creation and a statute limited the exercise of powers to persons capable of transferring property. N. Y. CONSOL. LAWS, 1909, c. 52, § 114. Nor can the intent of the testator be carried out without resort to the doctrine of powers, since it is an attempt in substance to incorporate by reference a non-existing document. A provision against the lapsing of a legacy by a power of appointment in the legatee is thus impossible.

RECEIVERS — POWER TO SUE IN A FOREIGN JURISDICTION. — A statute made receivers the assignees of the corporation's property. A receiver appointed under this statute brought suit in a foreign jurisdiction against a stockholder for an assessment levied on his stock by the court in which the receivership